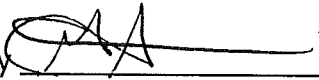


FILED

September 26, 2012

DEPARTMENT OF REAL ESTATE  
P. O. Box 187007  
Sacramento, CA 95818-7007  
Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	DRE No. H-11295 SF
	)	
MAIN STREET TRUST REAL ESTATE	)	<u>STIPULATION AND AGREEMENT</u>
INVESTMENT COMPANY, INC. and	)	<u>IN SETTLEMENT AND ORDER</u>
DOLORES M. RODRIGUEZ-GAMBA,	)	
	)	
Respondents.	)	
	)	

It is hereby stipulated by and between MAIN STREET TRUST REAL ESTATE INVESTMENT COMPANY, INC. (MSTRE), DOLORES M. RODRIGUEZ-GAMBA (RODRIGUEZ-GAMBA), and their attorney, Sean B. Absher, and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on January 7, 2012, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement In Settlement and Order.

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1                   2. Respondents have received, read and understand the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
3 of Real Estate in this proceeding.

4                   3. On January 12, 2012, MSTRE and RODRIGUEZ-GAMBA filed a Notice of  
5 Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a  
6 hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily  
7 withdraw said Notices of Defense. Respondents acknowledge that they understand that by  
8 withdrawing said Notices of Defense they will thereby waive their rights to require the  
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that they will waive other rights afforded to  
11 them in connection with the hearing such as the right to present evidence in defense of the  
12 allegations in the Accusation and the right to cross-examine witnesses.

13                  4. Respondents, pursuant to the limitations set forth below, hereby admit that  
14 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding  
15 are true and correct and the Real Estate Commissioner shall not be required to provide further  
16 evidence of such allegations.

17                  5. It is understood by the parties that the Real Estate Commissioner may adopt  
18 the Stipulation and Agreement In Settlement and Order as her Decision in this matter, thereby  
19 imposing the penalties and sanctions on Respondents' real estate licenses and license rights as  
20 set forth in the below "Order". In the event that the Commissioner in his discretion does not  
21 adopt the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect,  
22 and Respondents shall retain the right to a hearing and proceeding on the Accusation under all  
23 the provisions of the APA and shall not be bound by any admission or waiver made herein.

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27 ///

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

7. RODRIGUEZ-GAMBA understands that by agreeing to this Stipulation and Agreement In Settlement and Order, RODRIGUEZ-GAMBA agrees to pay, pursuant to Section 10148 of the Business and Professions Code (Code), the cost of the audit which led to this disciplinary action. The amount of said cost is \$7,419.50.

8. RODRIGUEZ-GAMBA has received, read and understands the "Notice Concerning Costs of Subsequent Audits". RODRIGUEZ-GAMBA understands that by agreeing to this Stipulation and Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF ISSUES become final, and that the Commissioner may charge RODRIGUEZ-GAMBA for the cost of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum costs of said audit will not exceed \$7,419.50.

## DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent MSTRE under the provisions of Sections 2831.1 and 2834 of Title 10, California Code of Regulations (Regulations), and Sections 10140.6, 10145, 10177(d), 10177(g), 10231.2 and 10238(E) of the Code and of Respondent RODRIGUEZ-GAMBA under the provisions of Section 2725 of the Regulations and Sections 10159.2, 10177(d) and 10177(h) of the Code.

1 ORDER

2 I. MAIN STREET TRUST REAL ESTATE INVESTMENT COMPANY, INC.

3 The corporate real estate broker license and license rights of Respondent MAIN  
4 STREET TRUST REAL ESTATE INVESTMENT COMPANY, INC. (MSTRE) under the  
5 Real Estate Law are suspended for a period of sixty (60) days from the effective date of this  
6 Order; provided, however, that:

7 1. Thirty (30) days of said suspension shall be stayed, upon the condition that  
8 MSTRE petition pursuant to Section 10175.2 of the Code and pays a monetary penalty  
9 pursuant to Section 10175.s of the code at a rate of \$100.00 for each day of the suspension for a  
10 total monetary penalty of \$3,000.00

11 a. Said payment shall be in the form of a cashier's check or certified check made  
12 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the  
13 Department prior to the effective date of the Decision in this matter.

14 b. No further cause for disciplinary action against the real estate license of  
15 MSTRE occurs within one year from the effective date of the Decision in this matter.

16 c. If MSTRE fails to pay the monetary penalty in accordance with the terms and  
17 conditions of the Decision, the Commissioner may, without a hearing, order the immediate  
18 execution of all or any part of the stayed suspension in which event MSTRE shall not be  
19 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department  
20 under the terms of this Decision.

21 d. If MSTRE pays the monetary penalty, and if no further cause for disciplinary  
22 action against the real estate license of MSTRE occurs within one (1) year from the effective  
23 date of the Decision, the stay hereby granted shall become permanent.

24 2. Thirty (30) days of said suspension shall be stayed for one (1) year upon the  
25 following terms and conditions:

26 a) MSTRE shall obey all laws, rules and regulations governing the rights, duties  
27 and responsibilities of a real estate licensee in the State of California; and,

1                   b) That no final subsequent determination be made, after hearing or upon  
2 stipulation that cause for disciplinary action occurred within one (1) year from the effective  
3 date of this Order. Should such a determination be made, the Commissioner may, in his  
4 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
5 suspension. Should no such determination be made, the stay imposed herein shall become  
6 permanent.

7                   II. DOLORES M. RODRIGUEZ-GAMBA

8                   The real estate broker license and license rights of Respondent DOLORES M.  
9 RODRIGUEZ-GAMBA (RODRIGUEZ-GAMBA), under the Real Estate Law are suspended  
10 for a period of sixty (60) days from the effective date of this Order; provided, however, that:

11                   1. Thirty (30) days of said suspension shall be stayed, upon the condition that  
12 RODRIGUEZ-GAMBA petition pursuant to Section 10175.2 of the Code and pays a monetary  
13 penalty pursuant to Section 10175.s of the code at a rate of \$100.00 for each day of the  
14 suspension for a total monetary penalty of \$3,000.00

15                   a. Said payment shall be in the form of a cashier's check or certified check made  
16 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the  
17 Department prior to the effective date of the Decision in this matter.

18                   b. No further cause for disciplinary action against the real estate license of  
19 RODRIGUEZ-GAMBA occurs within one year from the effective date of the Decision in this  
20 matter.

21                   c. If RODRIGUEZ-GAMBA fails to pay the monetary penalty in accordance  
22 with the terms and conditions of the Decision, the Commissioner may, without a hearing, order  
23 the immediate execution of all or any part of the stayed suspension in which event  
24 RODRIGUEZ-GAMBA shall not be entitled to any repayment nor credit, prorated or  
25 otherwise, for money paid to the Department under the terms of this Decision.

26                   d. If RODRIGUEZ-GAMBA pays the monetary penalty, and if no further cause  
27 for disciplinary action against the real estate license of RODRIGUEZ-GAMBA occurs within

1 one (1) year from the effective date of the Decision, the stay hereby granted shall become  
2 permanent.

3 2. Thirty (30) days of said suspension shall be stayed for one (1) year upon the  
4 following terms and conditions:

5 a) RODRIGUEZ-GAMBA shall obey all laws, rules and regulations governing  
6 the rights, duties and responsibilities of a real estate licensee in the State of California; and,

7 b) That no final subsequent determination be made, after hearing or upon  
8 stipulation that cause for disciplinary action occurred within one (1) year from the effective  
9 date of this Order. Should such a determination be made, the Commissioner may, in his  
10 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
11 suspension. Should no such determination be made, the stay imposed herein shall become  
12 permanent.

13 3. Pursuant to Section 10148 of the Business and Professions Code,  
14 RODRIGUEZ-GAMBA shall pay for: a) the Commissioner's reasonable cost of the audit  
15 which led to this disciplinary action in the amount of \$7,419.50 and b) a subsequent audit to  
16 determine if Respondents have corrected the trust fund violations found in the Determination of  
17 Issues in an amount that shall be no more than \$7,419.50. In calculating the amount of the  
18 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly  
19 salary for all persons performing audits of real estate brokers, and shall include an allocation  
20 for travel costs, including mileage, time to and from the auditor's place of work and per diem.  
21 Respondents shall pay such cost within sixty (60) days of receiving an invoice from the  
22 Commissioner detailing the activities performed during the audit and the amount of time spent  
23 performing those activities. The Commissioner may, in his discretion, vacate and set aside the  
24 stay order, if payment is not timely made as provided for herein, or as provided for in a  
25 subsequent agreement between the Respondents and the Commissioner. The vacation and the  
26 set aside of the stay shall remain in effect until payment is made in full, or until Respondents  
27 enter into an agreement satisfactory to the Commissioner to provide for payment. Should no

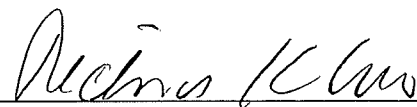
1 order vacating the stay be issued, either in accordance with this condition, the stay imposed  
2 herein shall become permanent.

3 4. RODRIGUEZ-GAMBA shall, prior to the effective date, provide proof  
4 satisfactory to the Commissioner, of having cured the shortage found in the audit. Proof of  
5 satisfaction of this requirement includes a letter from an attorney or certified public accountant  
6 testifying to the fact that said shortage has been cured by RODRIGUEZ-GAMBA. If  
7 RODRIGUEZ-GAMBA fails to satisfy this condition, the Commissioner may order the  
8 suspension of RODRIGUEZ-GAMBA's license until RODRIGUEZ-GAMBA presents proof  
9 that RODRIGUEZ-GAMBA has cured the trust fund shortage.

10 5. All licenses and licensing rights of are indefinitely suspended until  
11 Respondent provides proof satisfactory to the Commissioner, of having taken and successfully  
12 completed the continuing education course on trust fund accounting and handling specified in  
13 paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code.  
14 Proof of satisfaction of this requirement includes evidence that Respondent has successfully  
15 completed the trust fund account and handling continuing education course within 120 days  
16 prior to the effective date of the Decision in this matter.

17  
18 9/7/12

19 DATED

18  
19 

20 RICHARD K. UNO, Counsel III  
21 DEPARTMENT OF REAL ESTATE

22 \* \* \*

23 I have read the Stipulation and Agreement in Settlement and Order and its terms  
24 are understood by me and are agreeable and acceptable to me. I understand that I am waiving  
25 rights given to me by the California Administrative Procedure Act (including but not limited to  
26 Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,  
27

intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

9.7.12

DATED

DELORES

DELORES M. RODRIGUEZ-GAMBA  
Designated Officer for Respondent  
MAIN STREET TRUST REAL ESTATE  
INVESTMENT COMPANY, INC.

\*\*\*

9.7.12

DATED

DELORES

DELORES M. RODRIGUEZ-GAMBA  
Respondent

*I have reviewed this Stipulation and Agreement as to form and content and have advised my client accordingly.*

September 6, 2012

DATED

SEAN B. ABSHER

Attorney for Respondents  
MAIN STREET TRUST REAL ESTATE  
INVESTMENT COMPANY, INC. and  
DELORES M. RODRIGUEZ-GAMBA

\*\*\*

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate




1 Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on

2 OCT 17 2012

3 IT IS SO ORDERED

9/21/2012

5 Real Estate Commissioner

6   
7  
8 By WAYNE S. BELL  
9 Chief Counsel